

CC 95-135

1828 L Street, NW • Eleventh Floor • Washington, DC. 20036-5109 • Telephone (202) 467-8800 • Facsimile (202) 467-8900

Page 10 of 10

Wm. Caton, Secretary  
September 15, 1997  
Page -2-

this selection process, and to assure patients that any physician they select is reputable and meets the highest standards of medical quality.

After months of planning, including developing business plans, contacting physicians nationwide and performing a painstaking investigation of their qualifications, NDSS placed an advertisement in a magazine of national circulation, including in its advertisement a toll-free telephone number for patients to call to be referred to a qualifying physician. Instead of listing the 800-639-3223 telephone number currently used by NDSS, NDSS mistakenly listed 888-639-3223, which is the telephone number that NDSS had requested to be placed in the "unavailable" pool of 888 numbers. Since the 888-639-3223 number is not in service, any patient who telephones that number will receive a recording which indicates that the number is not in service. A caller from Washington, D.C., for instance, receives a recording that states: "We're sorry. Your call cannot be completed as dialed. Please check the number and dial again. Thank you."

The magazine in which this advertisement appears will be out on the newsstands today. This is the only magazine NDSS is advertising in this month. Patients telephoning the 888-639-3223 number listed in the advertisement will of course be unable to reach NDSS. As a result, NDSS will be subjected to considerable liability from the physicians subscribing to the NDSS service. Participating physicians will at the very least require refunds of their investments. Most physicians are likely to discontinue their association with NDSS in the future, and some physicians may sue NDSS for breach of contract. In short, it is very possible that NDSS, a brand new business enterprise, will not survive this calamity.

It is therefore critical for NDSS to obtain regulatory relief from the Commission. On January 25, 1996, the Common Carrier Bureau released a Report and Order directing Responsible Organizations to poll their 800 subscribers to determine which numbers subscribers might want replicated in 888.<sup>1</sup> These "protected" numbers were to be sent to Database Services Management, Inc. ("DSMI"), which was directed to place the numbers in an "unavailable" pool until the Commission could address issues related to their assignment.<sup>2</sup> In compliance with this directive, the Sprint Corporation, which was at the time NDSS' Responsible Organization,<sup>3</sup> sent NDSS' 888-639-3223 telephone number to DSMI, who placed the number into the "unavailable"

---

<sup>1</sup> Toll Free Service Access Codes, Report and Order, 11 FCC Rcd 2496, at ¶¶ 37-38 (1996).

<sup>2</sup> Id.

<sup>3</sup> NDSS' current Responsible Organization is Cable & Wireless.

Wm. Caton, Secretary  
September 15, 1997  
Page -3-

pool.<sup>4</sup> Under current Commission guidelines, any telephone number placed in the "unavailable" pool may be released only at the request of the Responsible Organization, and any such release must be made into the "general" pool, which immediately subjects the number to a first-come, first-served allotment procedure.<sup>5</sup>

Because of the urgency of NDSS' predicament, NDSS requests the Commission to waive its rules and direct DSMI to release to NDSS, on a temporary basis, the 888-639-3223 telephone number held currently in "unavailable" status. NDSS seeks this temporary release only for a period of 90 days, and only for the purpose of allowing Cable & Wireless, NDSS' current Responsible Organization, to forward calls made to that 888 number to the replicated 800-639-3223 telephone number currently used by NDSS, or in the alternative, to interrupt telephone calls to 888-639-3223 and insert a recording directing patients to the replicated 800-639-3223 number. After 90 days, Cable & Wireless will return this 888-639-3223 number to DSMI for reinsertion into the "unavailable" pool. It is understood that if granted this Special Temporary Authority, NDSS will not use its STA to assert any rights over the 888-639-3223 telephone number greater than any rights it currently may have.

The irreparable injury and financial loss resulting from NDSS' error is harmful not only to NDSS and to the upstanding physicians participating in NDSS, but also to patients around the country in need of straightforward, reliable information about physicians who can be trusted to treat their medical problems. Absent this Special Temporary Authority, NDSS' mistake may result in the failure of NDSS' start-up business, and discontinuance of NDSS' alternative to the confusing array of medical advertisements currently providing information to patients. It is therefore critical not only to NDSS and to participating physicians, but also to patients, to keep NDSS open as a line of communication between patients and physicians.

Accordingly, to facilitate NDSS' ability to render a vital service to members of the public, NDSS respectfully requests the Commission to direct DSMI to release to NDSS, without release into the "general" pool, telephone number 888-639-3223, on a temporary, 90-day basis, so that Cable & Wireless may forward calls from 888-639-3223 to NDSS' correct 800-639-3223 number, or in the alternative, to allow Cable & Wireless to interrupt calls made to 888-639-3223 to insert a recording directing patients to 800-639-3223.

---

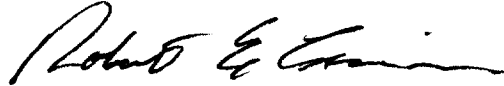
<sup>4</sup> Both the 800-639-3223 number and the 888-639-3223 number were originally associated with a company known as New Hair Institute. Both New Hair Institute and NDSS are owned by Dr. William Rassman.

<sup>5</sup> See letter order dated June 24, 1996, from Regina M. Keeney, Chief of the Common Carrier Bureau, to DSMI, in CC Docket No. 95-155.

Wm. Caton, Secretary  
September 15, 1997  
Page -4-

Should any questions arise in connection with this matter, please  
communicate directly with undersigned counsel or with Thomas B. Magee of this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert E. Levine". The signature is fluid and cursive, with the first name "Robert" being more prominent and the last name "Levine" written in a more compact, flowing style.

Robert E. Levine